Drawn Metal Products Division Co. *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America on its own behalf and on behalf of UAW Local 6 Amalgamated Unit 1. Case 13–CA–45479

February 26, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint and compliance specification. Upon a charge filed by the Union on August 18, 2009, the General Counsel issued the complaint and compliance specification on October 21, 2009, against Drawn Metal Products Division Co., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On December 28, 2009, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on December 30, 2009, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment[1]

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. Similarly, Section 102.56 of the Board's Rules and Regulations provides that the allegations in a compliance specification will be taken as true if an answer is not filed within 21 days from service of the compliance specification. In addition, the complaint and compliance specification affirmatively stated that unless an answer was received by November 12, 2009, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint and compliance specification are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated December 11, 2009, notified the Respondent that unless an answer was received by December 18, 2009, a motion for default judgment would be filed.

In the absence of good cause being shown for the failure to file an answer or a response to the Notice to Show Cause, we deem the allegations in the complaint and compliance specification to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Niles, Illinois (the Respondent's facility), has been engaged in the manufacture of metal parts for the automobile industry.

During the 12-month period preceding issuance of the complaint and compliance specification, a representative period, the Respondent, in conducting its business operations described above, purchased and received at its facility goods valued in excess of $50,000 directly from points outside the State of Illinois and sold and shipped from its facility goods valued in excess of $50,000 directly to points outside the State of Illinois.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that International Union, United Automobile, Aerospace and Agricultural Implement Workers of America on its own behalf and on behalf of UAW Local 6 Amalgamated Unit 1, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Teamsters Local 523 v. NLRB*, 590 F.3d 849 (10th Cir. 2009); *Narricot Industries, L.P. v. NLRB*, 587 F.3d 654 (4th Cir. 2009); *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. Sept. 11, 2009) (No. 09-328); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), cert. granted 130 S.Ct. 488 (2009); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. Aug. 18, 2009) (No. 09-213). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed 78 U.S.L.W. 3185 (U.S. Sept. 29, 2009) (No. 09-377).

Shawn Brady	President, General Manager, Owner
Kari Burns	Human Resource Manager

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production, maintenance, and tool room employees employed by the Respondent in its plant located at 6143 West Howard Street, Niles, Illinois; but excluding office clerical employees, professional employees, technical employees, confidential employees, guards and supervisors as defined in the Act.

Since about November 1, 1997, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from November 1, 1997, to November 1, 2000, and renewed from year-to-year thereafter.

At all times since about November 1, 1997, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About April 29, 2009, the Respondent and the Union reached agreement for and executed a "Plant Closing Agreement" in anticipation of the Respondent's intention to terminate its business operations.

The Plant Closing Agreement provided that the provisions of the collective-bargaining agreement described above shall continue in effect until midnight of the plant closing date.

The Plant Closing Agreement further provided that the Respondent would continue medical insurance coverage for employees until the plant closing date and that thereafter, unit employees would be entitled to continue coverage in accordance with Federal and/or State laws.

Since about April 29, 2009, the Respondent has failed to comply with the Plant Closing Agreement by failing to maintain the medical insurance coverage for employees until the plant closing date and failing to provide unit employees the opportunity to continue such coverage in accordance with Federal and/or State laws.

Since about April 29, 2009, the Respondent has failed to comply with the Plant Closing Agreement by failing to pay employees the vacation pay due them pursuant to the Plant Closing Agreement.

Since about April 29, 2009, the Respondent has failed to comply with the provisions of the Plant Closing Agreement by failing to remit union dues to the Union that were deducted from employees' paychecks.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

The Respondent engaged in the conduct described above without the consent of the Union in violation of Section 8(d) of the Act.

About May 19 and 21, 2009, the Union, by letter, has requested that the Respondent furnish the Union with information pertaining to the Respondent's business operations and financial condition.

The information requested by the Union, as described above, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about May 19 and 21, 2009, the Respondent, by Shawn Brady, has failed and refused to furnish the Union with the information requested by it as described above.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the Union in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by failing, since about April 29, 2009, to continue in effect all the terms and conditions of its Plant Closing Agreement with the Union with respect to medical insurance coverage and vacation pay, we shall order the Respondent to make the employees whole by paying them the amounts set forth in the complaint and compliance specification, plus interest accrued to the date of payment as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and State laws.

In addition, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to remit to the Union dues deducted from the paychecks of unit employees pursuant to the parties' Plant Closing Agreement, we shall order the Respondent to remit to the Union the amount set forth in the complaint and compliance

specification, plus interest accrued to the date of payment as set forth in *New Horizons for the Retarded*, supra.

Further, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with information that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the information that it requested on about May 19 and 21, 2009.

ORDER

The National Labor Relations Board orders that the Respondent, Drawn Metal Products Division Co., Niles, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America on its own behalf and on behalf of UAW Local 6 Amalgamated Unit 1, as the exclusive collective-bargaining representative of the employees in the unit by failing, since about April 29, 2009, to continue in effect all the terms and conditions of its Plant Closing Agreement with the Union with respect to medical insurance coverage and vacation pay. The appropriate unit is:

> All full-time and regular part-time production, maintenance, and tool room employees employed by the Respondent in its plant located at 6143 West Howard Street, Niles, Illinois; but excluding office clerical employees, professional employees, technical employees, confidential employees, guards and supervisors as defined in the Act.

(b) Failing to remit dues to the Union that were deducted from the paychecks of unit employees pursuant to the parties' Plant Closing Agreement.

(c) Failing and refusing to furnish the Union with information that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole the individuals named below for any loss of earnings and other benefits suffered as a result of the Respondent's failure, since April 29, 2009, to continue in effect all the terms and conditions of its Plant Closing Agreement with the Union with respect to medical insurance coverage and vacation pay, by paying them the total amounts following their names, plus interest accrued to the date of payment, as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal and State laws:

NAME	**TOTAL AMOUNT DUE**
Anaya, Ramon	$ 2,550
DeAlesio, Tony	2,908
Ferrer, Jose	1,020
Gonzales, Santiago	2,560
Ibes, John	3,060
Lijovic, Bob	2,678
Loza, Benjamin	12,596
Loza, Jose	3,156
Ly, Hao The	3,020
Puga, Julio	1,020
TOTAL BACKPAY DUE	**$34,568**

(b) Remit to the Union all dues that were deducted from unit employees' paychecks pursuant to the parties' Plant Closing Agreement that have not been remitted to the Union, by paying to the Union $14.34, plus interest accrued to the date of payment as set forth in *New Horizons for the Retarded*, supra.

(c) Furnish the Union with the information that it requested on about May 19 and 21, 2009.

(d) Within 14 days after service by the Region, post at its facility in Niles, Illinois, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 29, 2009.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region at-

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

testing to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 26, 2010

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America on its own behalf and on behalf of UAW Local 6 Amalgamated Unit 1, as the exclusive collective-bargaining representative of the employees in the unit by failing to continue in effect all the terms and conditions of our Plant Closing Agreement with the Union with respect to medical insurance coverage and vacation pay. The appropriate unit is:

> All full-time and regular part-time production, maintenance, and tool room employees employed by us in our plant located at 6143 West Howard Street, Niles, Illinois; but excluding office clerical employees, professional employees, technical employees, confidential employees, guards and supervisors as defined in the Act.

WE WILL NOT fail to remit dues to the Union that were deducted from the paychecks of unit employees pursuant to our Plant Closing Agreement with the Union.

WE WILL NOT fail and refuse to furnish the Union with information that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT, in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make whole the unit employees for any loss of earnings and other benefits suffered as a result of our failure, since April 29, 2009, to continue in effect all the terms and conditions of our Plant Closing Agreement with the Union with respect to medical insurance coverage and vacation pay, by paying them the amounts set forth in the Board's Order, plus interest accrued to the date of payment, and minus tax withholdings required by Federal and State laws.

WE WILL remit to the Union all dues that were deducted from unit employees' pay checks pursuant to our Plant Closing Agreement with the Union that have not been remitted to the Union, by paying to the Union $14.34, plus interest accrued to the date of payment.

WE WILL furnish the Union with the information that it requested on about May 19 and 21, 2009.

DRAWN METAL PRODUCTS DIVISION CO.